

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHERYL SCHWARZWAELDER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-1879
)	Judge Terrence F. McVerry
MERRILL LYNCH & CO., INC.)	Magistrate Judge Lisa Pupo Lenihan
and METROPOLITAN LIFE)	
INSURANCE CO.,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff's Complaint was received by the Clerk of Court on December 15, 2004, and was subsequently referred to United States Magistrate Judge Lisa Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation of November 21, 2006 recommended that Defendant's Motions for Summary Judgment (Docket # 28) and to Strike Plaintiff's Affidavit (Docket # 42) be denied and that this Court remand the case to the Administrator for interpretation of the Plan language at issue and, if necessary, reconsideration of Plaintiff's benefit claim in the first instance, all as more fully set forth in the Magistrate's Report. Service was made on all parties. It further recommended that the Court order that either party

may reopen this matter at the same civil action number by filing a motion to re-open within 30 days after a new decision by the Plan fiduciary.

No objections to the Report and Recommendation were filed. After review of the pleadings and documents in the case, together with the Report and Recommendation, the following Order is therefore entered:

AND NOW, this 12th day of December, 2006:

IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment and Motion to Strike Affidavit be denied and that the case be remanded to the Administrator as aforesaid.

IT IS FURTHER ORDERED that either party may reopen this matter at the same civil action number by filing a motion to re-open within 30 days after a new decision by the Plan fiduciary.

AND IT IS ORDERED that the Report and Recommendation of Magistrate Judge Lenihan is adopted as the Opinion of the Court.

BY THE COURT:

s/ Terrence F. McVerry
United States District Judge

cc: All counsel of record